

VIII. RECOMMENDATIONS

The LTC industry has grown increasingly concerned with problems related to the availability and cost of liability insurance. Over 20 percent of the individual states have introduced or recently enacted legislation that attempts to address the issue.

Market changes affecting the insurance industry are difficult to predict and even more difficult to influence. The data available to DHS and CDI are limited and generate more questions than they provide answers. However, the insurance industry is reacting to disturbing trends in the LTC arena. Insurers are concerned about quality of care issues in nursing homes. As they evaluate the effectiveness of government oversight, and of the frequency of legal actions, insurers see a greater degree of risk in today's market for writing liability insurance for LTC providers.

Ensuring quality of care has always been the objective of responsible government agencies. In California, under Governor Davis, the focus on nursing homes seeks to consider performance and quality improvement in both its regulatory oversight and Medi-Cal reimbursement systems.

Protecting the civil rights of the abused infirm and elderly should be closely related to enforcement actions to improve quality of care for all residents. However, DHS currently has no system to assess the effectiveness of civil actions to improve quality is not possible.

Promoting a continuum of quality LTC options for California's elderly is a major principle of the Governor's Aging with Dignity Initiative. Provision of health care, however, is a consumer service and a business enterprise. Recommendations must consider quality outcomes, access to care, and impact on business operations.

RECOMMENDATIONS

1. Increase DHS data regarding litigation and insurance claims against nursing homes.
2. Increase DHS data regarding cost and availability of liability insurance.
3. Require nursing homes to implement an approved risk management plan as a condition of health facility licensure.
4. Conduct a study to assure the relationship between enforcement and legal actions in recent elder abuse cases.
5. DHS to work with the LTC Council to evaluate the broader implication of the affect of liability insurance issues on all LTC providers.

DHS recommendations focus on securing the information necessary for rational decision-making, and on supporting facility efforts to improve quality by strengthening facility system(s) to reduce losses.

Recommendation 1.

DHS, in consultation with CDI, the Medical Board of California, and OSHPD, will implement a system, effective January 2004, to notify all nursing homes, ICF-DD facilities, and liability insurance carriers, of the reporting requirements specified in H&S Code, Section 1305 (see Inset).

Section 1305. Insurers; report of judgments and settlements

- (a) Every insurer providing professional liability insurance to a health facility licensed pursuant to this chapter and every health facility or associated group of health facilities licensed pursuant to this chapter under common ownership which are self insured shall report periodically, but in no event less than once each year, to the state department any final judgment over three thousand dollars (\$3,000) rendered against such health facility during the preceding year of, a claim or action for damages for personal injuries caused by an error, omission, or negligence in the performance of its professional services, or by the performance of its professional services without consent.
- (b) In the event that there are no final judgments or settlements in excess of three thousand dollars (\$3,000) during the year such fact shall also be reported to the department. (Added by St. 1973).

Implementation of this statute will provide useful data regarding final judgments or settlements over \$3,000 rendered against a health facility and specified claims or actions for damages.

In addition, in October 2002, the Administration announced a consumer protection initiative to aid nursing home residents. One of its provisions required nursing homes to report all civil and criminal court actions filed against the facility to DHS.

Recommendation 2.

DHS, in consultation with CDI and OSHPD, will determine by December 2003, the need for a regulatory or statutory change to mandate that nursing homes provide specific basic information liability insurance coverage, at the time of application and annually thereafter. The evaluation will utilize:

- CDI information secured from licensed or admitted insurers in the State;
- OSHPD information secured under current financial reporting requirements for nursing homes;
- Information generated from a survey conducted by DHS, to be issued late 2003, of all nursing home owners regarding their current method of coverage and policy structure, including premiums, deductibles and policy terms.

Recommendation 3

DHS will explore regulatory or statutory changes to require nursing homes to develop and implement a risk management plan that is approved by DHS as a condition of licensure. The requirements will identify the basic component that a facility's plan must include to comply. In general terms, the risk management requirement is summarized below:

Structure

- Risk manager (full-time for a facility of 50 beds or more).
- Risk management committee with ongoing delegated authority to specific individuals for the day-to-day operation of a loss control program.
- Internal processes to provide organizational integrity and corporate compliance with all local, state, and federal laws and regulations.
- Training program for new employees and ongoing coordination of in-service training.

Basic Components

- Regularly planned risk assessments to identify areas of risk in the facility.
- Risk management committee will develop the risk management plan. The risk information must be translated into decisions and mitigating actions.
- A plan for implementing corrective action, including establishing an early reporting and coordinated response procedure.
- A plan for tracking and evaluating the effectiveness and overall performance of the program.
- A program audit that includes a written plan to monitor and test safety and risk avoidance programs.
- A communication system that establishes a process for submitting suggestions or concerns to the risk manager or the risk management committee. A safety and risk avoidance manual describing the organization's structure and approach for maintaining a safe environment to be provided to staff, volunteer personnel, residents and family members.

Documentation

- Action plan and specific priorities for focused efforts of risk mitigation.
- Corporate compliance plan.
- Claims summary and trend analysis—trending should include evaluation of both claims frequency and severity.
- Required document checklist.

- Risk management committee minutes of meetings.

Required Reporting to DHS

- Risk management plan.
- Quarterly generated claims summary, with the organization's trend analysis. Starting in 2006, DHS will publish industry benchmarks for risk management, identify industry trends in claims experience, with mean values as well as one and two standard deviations.

DHS Technical Assistance

- To act as a resource to facilities requesting additional assistance with establishing their risk management programs, or in addressing risk mitigation in any one of the organization's focus areas.
- To act as a resource to liability insurance providers that have questions regarding the information available about LTC facilities that is generated by the regulatory oversight process.

Recommendation 4.

DHS, in consultation with the Office of the Attorney General, Bureau of Medi-Cal Fraud and Elder Abuse, by January 2004, will complete a review of available elder abuse cases that resulted in settlements or punitive damages. The review will address court documents, DHS enforcement actions, performance indicators, and trend data preceding and following the civil action.

Recommendation 5.

DHS will work with the Long-Term Care Council to evaluate the broader implications stemming from the issues raised in the report, *Liability Insurance for California Long-Term Care Providers, A Report to the Legislature*. DHS also will provide any consultation necessary should the Council determine action on the issue at the agency level is required.